

# **EXHIBIT 2**

Foster, Richard P. HIGHLY CONFIDENTIAL February 20, 2008  
Philadelphia, PA

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
CIVIL ACTION NO. 03-CV-11865-PBS

- - - - - x

THE COMMONWEALTH OF MASSACHUSETTS, )

Plaintiff, )

-against- )

MYLAN LABORATORIES, INC., et al., )

Defendants. )

- - - - - x

(Caption continued on next page)

Highly Confidential Videotaped Deposition  
of RICHARD P. FOSTER was taken, pursuant to  
notice, held at the Westin Hotel, 99 S. 19th  
Street, Philadelphia, Pennsylvania on  
Wednesday, February 20, 2008, beginning at or  
about 9:37 a.m., before Debra J. Veneziale,  
Court Reporter and Notary Public and Richard  
Kanzinger, Jr., Videotape Operator.

202-220-4158

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1 the case may be, and you couldn't be more than  
2 one standard deviation away from any of the other  
3 generic SWPs.

4 Q. So, tell me if I'm understanding you  
5 correctly, one of the requirements that you  
6 understood -- this was in order to get FDB  
7 designation of your product as a generic product;  
8 is that right?

9 A. This was for us to get listed on their  
10 database at all. There was some generic products  
11 that we marketed that were called brands by First  
12 DataBank.

13 Q. Okay.

14 You could get listed if you -- as long  
15 as you reported an AWP price, right?

16 A. As long as you reported a number of  
17 characteristics along with AWP and a WAC.

18 Q. Right.

19 But in order to -- is it fair, is it  
20 accurate to say that your understanding while you  
21 were at TEVA was that one of the criteria that  
22 First DataBank would look at was the AWP price

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1       adjust it. The one instance where I remember  
2       where we would have to adjust it was Enalapril.  
3       That's the generic version of Vasotec. There  
4       were 11 competitors who sold the product. We set  
5       our AWP and set our WAC, and then -- I think we  
6       were 11. It might have been a little more, a  
7       little less, it was something in that range, and  
8       then when we launched the product the brand price  
9       -- the brand WAC, if I remember correctly, was in  
10      the \$220 range per 100. We wind up selling it  
11      for less than \$2. So, we would eventually have  
12      to drop our WAC price down. I don't remember how  
13      far we dropped it, but we dropped it  
14      significantly.

15           Q.. All right.

16           And the WAC price, was that an invoice  
17      price to the wholesalers?

18           A. Are you speaking in terms of me at TEVA  
19      or my general of the knowledge of the  
20      marketplace?

21           Q. Well, let's focus first at TEVA.

22           A. No problem. The WAC price is what the

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1       wholesalers would essentially buy the product  
2       for. They would be discounts that would happen  
3       after the fact.

4           Q. So, that the product when it was  
5       shipped to a wholesaler would be invoiced at the  
6       WAC price?

7           A. As far as I recall, while I was at  
8       TEVA, yes.

9           Q. All right.

10           And then depending upon the  
11       circumstances with the wholesaler there might be  
12       discounts, rebates, chargebacks, other price  
13       concessions that might get credited after those  
14       invoices had been sent?

15           A. That is correct.

16           Q. I think you said that using the example  
17       that if the brand AWP was at 100 on a new launch  
18       the TEVA generic AWP would be set around 89, and  
19       you said that if there was another generic  
20       manufacturer you might set the generic AWP at a  
21       lower level, that would be the deal with the one  
22       standard deviation?

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1           **A. The one standard deviation issue.**

2           **Q. Okay.**

3                   And I think you said that with regard  
4                   to the WAC you would -- if you were exclusive  
5                   kind of the rule of thumb would be to set the WAC  
6                   at 20 percent below the generic AWP, SWP that you  
7                   had set?

8           **A. That is correct.**

9           **Q. Okay.**

10                  And is it fair to say that as a general  
11                  rule that you wanted to have the WAC higher than  
12                  any contract prices that you had?

13           **A. As a general rule, yes.**

14           **Q. And why was that?**

15           **A. Because there would be a chargeback**  
16                  **relationship that will occur at the wholesaler**  
17                  **level. And you have to understand wholesalers**  
18                  **have lots of different customers. And if our --**  
19                  **and using the example that we have there, can I**  
20                  **just round the number to 90 to make my life**  
21                  **simple?**

22           **Q. Sure.**

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1 delete obsolete products, if there had been  
2 changes in pricing change it and then send it  
3 back to them?

4 Q. Prior to me arriving at TEVA they  
5 recently bought a couple of companies so I think  
6 there was some cleanup process that had to  
7 happen. In other words, you may have a TEVA  
8 product and a Copley product and a Novopharm  
9 product that was there and maybe these two are no  
10 longer being sold to Copley and Novopharm and is  
11 the TEVA one the right one that's out there.

12 And so you would have to confirm the  
13 NDC number, the imprints, the SWP, AWP and the  
14 WAC price.

15 Q. Okay.

16 And is it your recollection that it was  
17 those kinds of circumstances, but not a general  
18 every quarter or once a year that you got some  
19 kind of turnaround document from First DataBank?

20 A. I'm sorry, say again, please.

21 Q. Is it your understanding that documents  
22 from First DataBank to TEVA asking you to verify

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1 or confirm the information that First DataBank  
2 was reporting related only to the situation where  
3 you would acquire some companies and they were  
4 kind of cleaning up whether --

5 A. I just remember the activity.

6 Q. You don't recall a regular every year  
7 or every quarter turnaround?

8 A. Not off the top of my head, but again  
9 we're talking six to eight years ago so I may be  
10 mistaken.

11 Q. Okay.

12 MR. MULLIN: I've got about 12:15. Is  
13 this an appropriate place to take a lunch recess?

14 MS. LEVY: Sure.

15 VIDEOTAPE OPERATOR: Off the video, the  
16 time is 12:20.

17 (Whereupon, a short break was  
18 taken at this time.)

19 VIDEOTAPE OPERATOR: We're back on the  
20 record, the time is 1:25.

21 BY MR. MULLIN:

22 Q. Mr. Foster, I think you told us this

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1 Q. And you say: I will be forwarding you  
2 an e-mail from Tom that says Geneva is launching  
3 at a higher AWP. Can we check First DataBank and  
4 see if they are rated as a brand or a generic.  
5 If they are rated as a generic it would be  
6 prudent to match competition.

7                   Is it fair, is it accurate to say that  
8 throughout the time period when you were employed  
9 at TEVA, 2000 to 2002, that the policy was to  
10 match competitor's AWPs so long as you could  
11 maintain your generic designation?

12           A. Well, here's the issue. This is a  
13 supply issue. Example on Enalapril, I only had  
14 so many units to be able to supply the  
15 marketplace. If I was the only generic that was  
16 out there I could not supply the entire  
17 marketplace. This product had multiple  
18 competitors. I didn't have enough share to sell  
19 100 percent of the marketplace.

20 So, if I am the only one that's a  
21 generic, as I understood that, that happened in  
22 this particular case as I brought up earlier that

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1 Enalapril was an example where the price fell  
2 very quickly, therefore I'd have to turn because  
3 of the one standard deviation rule, to match  
4 that.

5 Or this might have been the case where  
6 there were other people that were lower and some  
7 were higher and I was trying to get to a place  
8 where I would be within a one standard deviation.

9 Q. Certainly you instructed Gene and Gene  
10 had Calculated numerous AWPs and WAC in the past,  
11 right, prior to working on the drug Enalapril?

12 A. Uh-hum.

13 Q. Right?

14 A. Yes.

15 Q. And he understood how to do that and  
16 communicate prices to First DataBank and get  
17 First DataBank between generic designation,  
18 right?

19 A. Well, the reason why Gene wasn't  
20 responsible for calculating these because Gene  
21 got it wrong a lot. Okay. And so once I came on  
22 board after a short of period I became

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1                   And if Geneva had a higher AWP than  
2 TEVA any third party payers who used AWP as the  
3 basis for reimbursement would be reimbursing more  
4 for the Geneva product than for the TEVA product;  
5 correct?

6                   **A. My issue was not reimbursement.**

7                   Q. I'd ask you to focus on my question and  
8 answer that question, whether that's true.

9                   **A. I'm sorry, you're trying to twist me**  
10 **around to something and I would to state**  
11 **something for the record if you don't mind.**

12                  Q. You may.

13                  **A. What I'm saying here is that here on**  
14 **this launch, as I recall, there were some**  
15 **problems with some low AWPs and some high AWPs.**

16                  Okay. What happened was the one standard  
17 deviation of First DataBank ran into a problem  
18 and I was trying to find a place where we could  
19 be set as a generic and be the only generic, and  
20 that's what I was trying to do in this situation.

21                  Q. When you sent this e-mail to Mr.  
22 Cioschi did you say anything about there being

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1 any lower AWPs by generics?

2 A. That's why I can we check with First  
3 DataBank if they're rated a brand or a generic.  
4 I'm implying, because I'm in the industry, that  
5 that would be checking to see whether there are  
6 other ones that are brand or generic.

7 Q. The they that you're referring to on  
8 the second line is Genova; correct?

9 A. Uh-hum. That was one of the they. He  
10 we have multiple competitors on the product.  
11 What Gene would have done he would have gotten me  
12 the whole First DataBank and we would have looked  
13 at the whole First DataBank list.

14 Q. At this time there are already some  
15 existing generic competitors with regard to this  
16 drug?

17 A. As I understand it, this launched about  
18 that period of time.

19 Q. So that were already some existing  
20 generic manufacturers who were selling this drug?

21 A. I think this was within a day or two of  
22 the product launching. So, are there existing

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1 think you said that in connection with a launch  
2 of a new product that the company I believe you  
3 said if it was exclusive it would set its WAC at  
4 20 percent of its suggested wholesale price; is  
5 that right?

6 **A. Yes.**

7 Q. What if you weren't exclusive, what was  
8 the policy with regard to setting WAC?

9 A. I don't believe we had a written  
10 policy.

11 Q. Was there any rule of thumb, guideline  
12 that you used?

13 A. Nothing in particular, as noted in one  
14 of your things that showed the Enalapril WAC. I  
15 think that the Buspirone I guess it is, Foster-3.

16 Q. And what's the percentage there?

17 A. The percentage discount there looks  
18 like -- I can't do the math in my head anymore,  
19 \$28.91 versus \$201.91 on the 15 milligrams 100s.  
20 So, 29 versus 202.

21 Q. So, it's approximately 10, 15 percent,  
22 the WAC? I think we have a calculator.

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1           A.    Thanks.  That saves me a headache.

2    14.3.  Thank you for your help.

3           Q.    So, it could be -- it's a 14.3 discount  
4    off of --

5           A.    No.  14.3 percent of the SWP.

6           Q.    So, it would be 85 point something?

7           A.    Yes, something like that.  Yes.

8           Q.    And in December -- that's a pretty  
9    broad range, from 20 percent up to as much as 85  
10   percent?

11          A.    I believe we have some that are higher.

12          Q.    Okay.

13           And what would be the factors or the  
14    criteria that you would consider in deciding  
15    where within that range to set the WAC price?

16          A.    How many competitors are there, how low  
17    is my AWP cost, how low is my lower manufacturing  
18    costs, what are my discounts that I have to give  
19    off WAC so I can understand what those numbers  
20    would be.  Those would all factor into my  
21    calculation.

22          Q.    And is it fair, is it accurate to say

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